



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

JUL 1 2009

Richard M. Swier, Ed. D.
LTC, US Army (Ret.)

Sarasota, FL 34238

RE: MUR 6083

Dear Mr. Swier:

On June 24, 2009, the Federal Election Commission reviewed the allegations in your complaint dated September 23, 2008, and found that on the basis of the information provided in your complaint, and information provided by the respondents, there is no reason to believe Obama for America and Martin H. Nesbit, in his official capacity as treasurer, violated 2 U.S.C. §§ 434(b) or 441a(f). In addition, the Commission dismissed this matter as to MoveOn.org Political Action and Wes Boyd, in his official capacity as treasurer. Accordingly, on June 24, 2009, the Commission closed the file in this matter.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003). The Factual and Legal Analyses, which more fully explain the Commission's findings, are enclosed.

The Federal Election Campaign Act of 1971, as amended, allows a complainant to seek judicial review of the Commission's dismissal of this action. See 2 U.S.C. § 437g(a)(8).

Sincerely,

Julie K. McConnell
Assistant General Counsel

Enclosures
Factual and Legal Analyses

29044250260

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: MoveOn.org Political Action and Wes Boyd,
in his official capacity as Treasurer

MUR: 6083

I. INTRODUCTION

This matter was generated by a complaint filed with the Federal Election Commission by Richard M. Swier, Ed. D., alleging violations of the Federal Election Campaign Act of 1971 ("the Act"), as amended by the Bipartisan Campaign Reform Act of 2002 ("BCRA"), by MoveOn.org Political Action and Wes Boyd, in his official capacity as Treasurer ("MoveOn").

II. FACTUAL AND LEGAL ANALYSIS

A. Factual Summary

The complaint in this matter alleges that MoveOn violated "its 527 organizational status" by directly soliciting or supporting a political campaign. Complaint, p.1. Specifically, the complainant alleges that on September 21, 2008, he received a phone call from an individual named Erin, who identified herself as a member of the Boston office of MoveOn and was calling from telephone number [REDACTED]. *Id.* The complainant states that during the call Erin asked him to go to the Sarasota County Obama campaign office and help with the Obama campaign. *Id.* According to the complaint, Erin stated that "they have lots of Obama supporters" in the Boston MoveOn offices. *Id.* Erin also allegedly provided the complainant with the number of the Sarasota County Obama Campaign Headquarters – (941) 955-9415. *Id.* Attached to the complaint is an e-mail from Adam Ruben, the political director of MoveOn, soliciting volunteers for the Obama campaign, containing the following content:

29044250262

Dear Rich,

Thank you for signing up to volunteer at your local Obama campaign office!

The campaign needs volunteers in your area. Obama can win, but only if we all help to identify and turn out as many progressive voters as possible on Election Day.

Here's the information on the meeting you're signed up for:

Date: Tue, 23 Sep
Time: 4:00 PM
Office name: Sarasota Campaign for Change Field Office
Address: 1343 Main St, 2nd Floor, Sarasota, FL 34236
Phone: (941) 955-9415

Your local Obama organizer will be expecting you. When you get to the office, be sure to let them know that you're a MoveOn volunteer. And if you want to stay involved, please ask about how to join a Neighborhood Team.

This election's going to come down to voter turnout. You can make a huge difference by helping identify and turn out progressive voters in your area.

-- Adam, Tanya, Michael, Matt and the rest of the team

In response to the complaint, MoveOn asserts that the complaint contains factual errors. MoveOn Response, pp. 1 and 3. In this regard, MoveOn points out that it is a federal political committee. *Id.*, p. 2. Moreover, MoveOn states that it did not have a Boston office during the 2007-2008 election cycle, but rather the call referenced in the complaint was made at one of a series of "MoveOn for Obama" house parties organized by MoveOn. *Id.*; see also Declaration of Adam Ruben at ¶¶ 2, 4 ("Ruben Decl.") MoveOn explains that the house parties were organized by volunteers in their own homes, and that guests at the parties would call MoveOn supporters using the guest's own cell phone or the telephone of the party host. Ruben Decl. at ¶¶ 4-5.

According to MoveOn, Erin Sweeney, a MoveOn volunteer, attended a house party near Boston and apparently used her cell phone or the telephone of the party host to call the

29044250263

complainant, who had participated in MoveOn's online campaigns and therefore appeared on a list of MoveOn supporters. MoveOn Response, p. 2; Ruben Decl. at ¶¶ 6-7. If the person called signed up to volunteer, the caller recorded that information and called a MoveOn hotline to record who had signed up. Ruben Decl. at ¶ 10. MoveOn states that the e-mail attached to the complaint conforms to MoveOn's practice, which was to send a confirming e-mail to each MoveOn supporter who had signed up to volunteer at an Obama campaign office. MoveOn Response, p. 2; Ruben Decl. at ¶ 10. MoveOn represents that it created the tools used, including the lists of supporters, the technology, and the hotline, for its operations generally, and not for its "MoveOn for Obama" house parties. Ruben Decl. at ¶ 11.

In response to the complaint, Obama for America ("OFA") points out that it never opened an office in Sarasota County and that the telephone number allegedly provided to the complainant was the telephone number for the Florida Democratic Party's field office in Sarasota, Florida. OFA Response, p. 1. OFA states that even if the MoveOn volunteer had provided contact information for an OFA office, that would not constitute a violation of law. OFA Response, p. 2.

B. Legal Analysis

Contrary to the complaint's assertion, MoveOn is a multi-candidate political committee that registered with the Commission on October 29, 1998.¹ There is nothing in the Act or the Commission's regulations that prohibits a political committee from engaging in the activity described in the complaint. Under the Act, political committees can make contributions, within

¹ A related entity, MoveOn.org Voter Fund, is organized under Section 527 of the Internal Revenue Code and registered as a political committee in 2006. See MUR 5754 (MoveOn.org Voter Fund), Conciliation Agreement, available at <http://eqs.nichusa.com/eqsdoss/000058F4.pdf> (Nov. 17, 2006). The e-mail confirming the activity at issue in this matter, attached to the complaint, was sent by "Adam Ruben, MoveOn.org Political Action" and does not appear to be related to MoveOn.org Voter Fund.

appropriate limits, and expenditures as long as they properly report them. *See* 2 U.S.C. §§ 434, 441a(a)(2).

The term contribution is defined as “any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office.” 2 U.S.C. § 431(8)(A)(i). Similarly, the term expenditure is defined as “any purchase, payment distribution, loan, advance, deposit, or gift of money or anything of value made by any person for the purpose of influencing any election for Federal office.” 2 U.S.C. § 431(9)(A)(i). The definition of “contribution” does not include the value of services provided without compensation by any individual who volunteers on behalf of a political committee. *See* 11 C.F.R. § 100.74. Similarly, no “contribution” or “expenditure” results where an individual volunteer provides the use of real or personal property to a candidate. *See* 11 C.F.R. §§ 100.74, 100.135. Here, MoveOn asserts that Erin Sweeney was a volunteer at a “MoveOn for Obama” house party and used her personal cell phone or the telephone of the party host to call the complainant. We have no information to the contrary. Thus, the volunteer activity at issue does not constitute a contribution or expenditure and thus did not trigger any reporting requirement.

Nor do we have information indicating that there were any other costs incurred by MoveOn in connection with these activities that would be independent expenditures or operating expenses requiring disclosure, or that would be in-kind contributions to OFA.

The complaint attached a single e-mail that likely involved a *de minimis*, if any, cost to the committee.

Thus, in light of an absence of information regarding any other potential costs associated with these activities, we dismiss this matter in an exercise of prosecutorial discretion. *See Heckler v. Chaney*, 470 U.S. 821, 831 (1985) (in determining whether to pursue an enforcement

action, an agency "must not only assess whether a violation has occurred, but whether agency resources are best spent on this violation or another . . . [and] whether the particular enforcement action requested best fits the agency's overall policies . . .").

29044250265

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Obama for America and Martin H. Nesbit,
in his official capacity as Treasurer

MUR: 6083

I. INTRODUCTION

This matter was generated by a complaint filed with the Federal Election Commission by Richard M. Swier, Ed. D., alleging violations of the Federal Election Campaign Act of 1971 ("the Act"), as amended by the Bipartisan Campaign Reform Act of 2002 ("BCRA"), by Obama for America and Martin H. Nesbit, in his official capacity as Treasurer ("OFA").

II. FACTUAL AND LEGAL ANALYSIS

A. Factual Summary

The complaint in this matter alleges that on September 21, 2008, the complainant received a phone call from an individual named Erin, who identified herself as a member of the Boston office of MoveOn.org Political Action ("MoveOn") and was calling from telephone number [REDACTED] Complaint, p. 1. The complainant states that during the call Erin asked him to go to the Sarasota County Obama campaign office and help with the Obama campaign. *Id.* According to the complaint, Erin stated that "they have lots of Obama supporters" in the Boston MoveOn offices. *Id.* Erin also allegedly provided the complainant with the number of the Sarasota County Obama Campaign Headquarters – (941) 955-9415. *Id.* Attached to the complaint is an e-mail from Adam Ruben, the political director of MoveOn, soliciting volunteers for the Obama campaign, containing the following content:

29044250266

29044250267

Dear Rich,

Thank you for signing up to volunteer at your local Obama campaign office!

The campaign needs volunteers in your area. Obama can win, but only if we all help to identify and turn out as many progressive voters as possible on Election Day.

Here's the information on the meeting you're signed up for:

Date: Tue, 23 Sep
Time: 4:00 PM
Office name: Sarasota Campaign for Change Field Office
Address: 1343 Main St, 2nd Floor, Sarasota, FL 34236
Phone: (941) 955-9415

Your local Obama organizer will be expecting you. When you get to the office, be sure to let them know that you're a MoveOn volunteer. And if you want to stay involved, please ask about how to join a Neighborhood Team.

This election's going to come down to voter turnout. You can make a huge difference by helping identify and turn out progressive voters in your area.

-- Adam, Tanya, Michael, Matt and the rest of the team

In response to the complaint, MoveOn asserts that the complaint contains factual errors. MoveOn Response, pp. 1 and 3. In this regard, MoveOn points out that it is a federal political committee. *Id.*, p. 2. Moreover, MoveOn states that it did not have a Boston office during the 2007-2008 election cycle, but rather the call referenced in the complaint was made at one of a series of "MoveOn for Obama" house parties organized by MoveOn. *Id.*; see also Declaration of Adam Ruben at ¶¶ 2, 4 ("Ruben Decl.") MoveOn explains that the house parties were organized by volunteers in their own homes, and that guests at the parties would call MoveOn supporters using the guest's own cell phone or the telephone of the party host. Ruben Decl. at ¶¶ 4-5.

According to MoveOn, Erin Sweeney, a MoveOn volunteer, attended a house party near Boston and apparently used her cell phone or the telephone of the party host to call the

29044250268

complainant, who had participated in MoveOn's online campaigns and therefore appeared on a list of MoveOn supporters. MoveOn Response, p. 2; Ruben Decl. at ¶¶ 6-7. If the person called signed up to volunteer, the caller recorded that information and called a MoveOn hotline to record who had signed up. Ruben Decl. at ¶ 10. MoveOn states that the e-mail attached to the complaint conforms to MoveOn's practice, which was to send a confirming e-mail to each MoveOn supporter who had signed up to volunteer at an Obama campaign office. MoveOn Response, p. 2; Ruben Decl. at ¶ 10. MoveOn represents that it created the tools used, including the lists of supporters, the technology, and the hotline, for its operations generally, and not for its "MoveOn for Obama" house parties. Ruben Decl. at ¶ 11.

In response to the complaint, OFA asserts that the complaint does not allege any facts that would describe a violation of federal campaign finance law on the part of OFA. OFA Response, p. 1. OFA points out that it never opened an office in Sarasota County and that the telephone number allegedly provided to the complainant was the telephone number for the Florida Democratic Party's field office in Sarasota, Florida. *Id.* OFA states that even if the MoveOn volunteer had provided contact information for an OFA office, that would not constitute a violation of law. OFA Response, p. 2.

B. Legal Analysis

Contrary to the complaint's assertion, MoveOn is a multi-candidate political committee that registered with the Commission on October 29, 1998.¹ Under the Act, political committees can make contributions, within appropriate limits, and expenditures as long as they properly report them. See 2 U.S.C. §§ 434, 441a(a)(2).

¹ A related entity, MoveOn.org Voter Fund, is organized under Section 527 of the Internal Revenue Code and registered as a political committee in 2006. See MUR 5754 (MoveOn.org Voter Fund), Conciliation Agreement, available at <http://esg.nictusa.com/esgdocs/000058F4.pdf> (Nov. 17, 2006). The e-mail confirming the activity at issue in this matter, attached to the complaint, was sent by "Adam Ruben, MoveOn.org Political Action" and does not appear to be related to MoveOn.org Voter Fund.

29044250269

The term contribution is defined as "any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office." 2 U.S.C. § 431(8)(A)(i). Similarly, the term expenditure is defined as "any purchase, payment distribution, loan, advance, deposit, or gift of money or anything of value made by any person for the purpose of influencing any election for Federal office." 2 U.S.C. § 431(9)(A)(i). The definition of "contribution" does not include the value of services provided without compensation by any individual who volunteers on behalf of a political committee. *See* 11 C.F.R. § 100.74. Similarly, no "contribution" or "expenditure" results where an individual volunteer provides the use of real or personal property to a candidate. *See* 11 C.F.R. §§ 100.74, 100.135. Here, MoveOn asserts that Erin Sweeney was a volunteer at a "MoveOn for Obama" house party and used her personal cell phone or the telephone of the party host to call the complainant. We have no information to the contrary. Thus, the volunteer activity at issue does not constitute a contribution or expenditure and thus did not trigger any reporting requirement.

Nor do we have information indicating that there were any other costs incurred by MoveOn in connection with these activities that would be in-kind contributions to OFA. Thus, there is no reason to believe that Obama for America and Martin H. Nesbit, in his official capacity as Treasurer, violated 2 U.S.C. §§ 434(b) or 441a(f) by knowingly receiving and failing to report receipt of an in-kind contribution.